

Physicians Answering Service, Inc. and Jean M. LaPlante. Case 1-CA-25737

January 28, 1992

SUPPLEMENTAL DECISION AND ORDERBY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On September 18, 1989, an administrative law judge of the National Labor Relations Board issued his decision in this case, ordering the Respondent, Physicians Answering Service, Inc., its officers, agents, successors, and assigns to offer to reinstate Jean M. LaPlante and to make her whole for any loss of earnings she may have suffered because of the Respondent's unfair labor practices. In the absence of exceptions, the Board on October 25, 1989, issued an unpublished Order adopting the judge's decision. On April 11, 1990, the United States Court of Appeals for the First Circuit entered a judgment enforcing the Board's Order.¹ A controversy having arisen over the amount of backpay due under the Board's Order as enforced, the Regional Director for Region 1 issued an amended backpay specification on September 30, 1991, alleging the amount of backpay due and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.² The amended specification was served on the Respondent in person on October 9, 1991.

On November 25, 1991, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. In the motion, the General Counsel alleges that (1) the Respondent failed to file an answer to the amended specification within 21 days after the issuance of the specification; (2) the Respondent was informed, by letter dated October 23, 1991, that if an answer was not received by November 6, 1991, the General Counsel would seek summary judgment from the Board; and (3) although the Regional Director, on November 5, 1991, granted the Respondent an extension of time until November 20, 1991, to file an answer, the Respondent still did not file an answer. The General Counsel further avers that the Respondent has

failed to comply with Section 102.56 of the Board's Rules and Regulations by failing either to file an answer to the amended specification or to request a further extension of time to do so. Accordingly, the General Counsel asserts that the allegations in the amended specification should be deemed to be true, and that backpay should be awarded as claimed in the amended specification.

On December 5, 1991, the Board issued an order transferring this proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. On December 19, the Respondent, acting pro se, filed a handwritten letter with the Regional Director, apparently in answer to the Notice to Show Cause. In the letter, however, the Respondent does not address in any way the allegations in the amended specification or in the Motion for Summary Judgment, nor does it offer any explanation for its failure to file an answer³ or to request an extension of time to do so.⁴

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in

¹No. 90-1242 (unpublished).

²The amended specification notified the Respondent that: [P]ursuant to Section 102.56 of the Board's Rules and Regulations . . . the Respondent shall, within twenty-one (21) days from the date of the Amended Specification, file with the undersigned, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to the Specification. To the extent that such answer fails to deny allegations of the amended Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

³Other than to assert that it does not understand the papers it has been sent.

⁴In the letter, the Respondent alleges that LaPlante and another employee stole proprietary information, lied under oath, and conspired against the Respondent. The Respondent also disparages LaPlante as an employee, and protests its innocence in the matters before the Board. These matters were, or should have been, raised in the underlying unfair labor practice proceeding; they will not be revisited in this backpay action.

detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Although the Respondent has been served with a copy of the amended specification and informed of the necessity of filing an answer, it has failed, without adequate explanation, to file an answer even though it was granted an extension of time to do so. Accordingly, we find the allegations of the backpay specification to be admitted to be true as provided in Section 102.56(c), and we find that they are correct. We therefore grant the General Counsel's Motion for Summary Judgment.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is granted, and that the Respondent, Physicians Answering Service, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall make Jean M. LaPlante whole for her losses caused by its discrimination against her by paying her \$49,113.59 in net backpay, plus interest accrued to the date of payment, minus tax withholdings required by Federal and state laws.